



February 20, 2004

ENGROSSED SENATE BILL No. 19

DIGEST OF SB 19 (Updated February 18, 2004 6:17 pm - DI 92)

Citations Affected: IC 6-3.5; IC 8-14; IC 8-14.5; IC 8-14.6; IC 8-23; IC 9-20.

Synopsis: Designation of extra heavy duty highways. Designates portions of U.S. 6, State Road 9 and U.S. 30 as extra heavy duty highways. Authorizes the transportation finance authority to issue bonds or notes secured by lease rentals relating to highway improvement projects and anticipated to be paid from receipt in the current federal fiscal year or a future federal fiscal year of federal transportation revenues. Authorizes the transportation finance authority to issue bonds or notes for local road projects that are secured by lease rentals payable by cities, towns, and counties. Provides that when issuing the bonds or notes, the authority is subject to certain rules concerning minority and women's business participation.

Effective: Upon passage; July 1, 2004.

Meeks C, Meeks R, Long, Dillon
(HOUSE SPONSORS — MOSES, BORROR, POND, GIAQUINTA)

November 18, 2003, read first time and referred to Committee on Rules and Legislative Procedure.

January 22, 2004, amended; reassigned to Committee on Transportation and Homeland Security.

January 29, 2004, amended, reported favorably — Do Pass.

February 2, 2004, read second time, ordered engrossed. Engrossed.

February 3, 2004, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 5, 2004, read first time and referred to Committee on Roads and Transportation.

February 12, 2004, reported — Do Pass; referred to Committee on Ways and Means pursuant to Rule 127.

February 19, 2004, amended, reported — Do Pass.

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ES 19—LS 6032/DI 13+



February 20, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 19

A BILL FOR AN ACT to amend the Indiana Code concerning transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3.5-4-12 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12. In the case of a
3 county that contains a consolidated city, the city-county council may
4 appropriate money derived from the surtax to:

5 (1) the department of transportation established by IC 36-3-5-4
6 for use by the department under law; **or**

7 (2) **the Indiana transportation finance authority for the**
8 **payment of lease rentals under IC 8-14.6.**

9 The city-county council may not appropriate money derived from the
10 surtax for any other purpose.

11 SECTION 2. IC 6-3.5-4-13 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. (a) In the case of a
13 county that does not contain a consolidated city of the first class, the
14 county treasurer shall deposit the surtax revenues in a fund to be known
15 as the "_____ County Surtax Fund".

16 (b) Before the twentieth day of each month, the county auditor shall
17 allocate the money deposited in the county surtax fund during that

ES 19—LS 6032/DI 13+



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month among the county and the cities and the towns in the county. The county auditor shall allocate the money to counties, cities, and towns under IC 8-14-2-4(c)(1) through IC 8-14-2-4(c)(3).

(c) Before the twenty-fifth day of each month, the county treasurer shall distribute to the county and the cities and towns in the county the money deposited in the county surtax fund during that month. The county treasurer shall base the distribution on allocations made by the county auditor for that month under subsection (b).

(d) A county, city, or town may only use the surtax revenues it receives under this section to:

(1) construct, reconstruct, repair, or maintain streets and roads under its jurisdiction; **or**

(2) provide funds to the Indiana transportation finance authority for the payment of lease rentals under IC 8-14.6.

SECTION 3. IC 6-3.5-5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 14. (a) In the case of a county that contains a consolidated city, the city-county council may appropriate money derived from the wheel tax to:

(1) the department of transportation established by IC 36-3-5-4 for use by the department under law; **or**

(2) an authority established under IC 36-7-23; **or**

(3) the Indiana transportation finance authority for the payment of lease rentals under IC 8-14.6.

(b) The city-county council may not appropriate money derived from the wheel tax for any other purpose.

SECTION 4. IC 6-3.5-5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) In the case of a county that does not contain a consolidated city, the county treasurer shall deposit the wheel tax revenues in a fund to be known as the "County Wheel Tax Fund".

(b) Before the twentieth day of each month, the county auditor shall allocate the money deposited in the county wheel tax fund during that month among the county and the cities and the towns in the county. The county auditor shall allocate the money to counties, cities, and towns under IC 8-14-2-4(c)(1) through IC 8-14-2-4(c)(3).

(c) Before the twenty-fifth day of each month, the county treasurer shall distribute to the county and the cities and towns in the county the money deposited in the county wheel tax fund during that month. The county treasurer shall base the distribution on allocations made by the county auditor for that month under subsection (b).

(d) A county, city, or town may only use the wheel tax revenues it receives under this section:

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(1) to construct, reconstruct, repair, or maintain streets and roads under its jurisdiction; ~~or~~

(2) as a contribution to an authority established under IC 36-7-23;
or

(3) provide funds to the Indiana transportation finance authority for the payment of lease rentals under IC 8-14.6.

SECTION 5. IC 8-14-10-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. The department may use the money in the fund only to pay the following costs:

(1) The cost of construction or reconstruction of a state highway.

(2) The cost of acquisition of all land, rights-of-way, property, rights, easements, and any other legal or equitable interests acquired by the department for the construction or reconstruction of a state highway, including the cost of any relocations incident to the acquisition.

(3) The cost of demolishing or removing any buildings, structures, or improvements on property acquired by the department for the construction or reconstruction of a state highway.

(4) Engineering and legal expenses, and the costs of plans, specifications, surveys, estimates, and any necessary feasibility studies.

(5) Payment of rentals and performance of other obligations under contracts or leases ~~relating to projects~~ **securing bonds issued under ~~IC 8-14.5. IC 8-14.5-6.~~**

SECTION 6. IC 8-14-10-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) The crossroads 2000 fund is established for the purpose of constructing or reconstructing state highways. The crossroads 2000 fund consists of distributions received under IC 9-29-1-2, IC 9-29-15-1, IC 9-29-15-3, and IC 9-29-15-4.

(b) The crossroads 2000 fund shall be administered by the department. The treasurer of state shall invest the money in the crossroads 2000 fund not currently needed to meet the obligations of the crossroads 2000 fund in the same manner as other public funds may be invested.

(c) Money in the crossroads 2000 fund at the end of a state fiscal year does not revert to the state general fund.

(d) The department may use the money in the crossroads 2000 fund only to pay the following costs:

(1) The cost of construction or reconstruction of a state highway.

(2) The cost of acquisition of all land, rights-of-way, property, rights, easements, and any other legal or equitable interests

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acquired by the department for the construction or reconstruction of a state highway, including the cost of any relocations incident to the acquisition.

(3) The cost of demolishing or removing any buildings, structures, or improvements on property acquired by the department for the construction or reconstruction of a state highway.

(4) Engineering and legal expenses, and the costs of plans, specifications, surveys, estimates, and any necessary feasibility studies.

(5) Payment of rentals and performance of other obligations under contracts or leases relating to projects securing bonds issued under ~~IC 8-14.5~~ IC 8-14.5-6.

SECTION 7. IC 8-14-10-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 10. (a) The grant anticipation fund is established to construct and reconstruct state highways. The grant anticipation fund consists of distributions of federal transportation revenues (as defined in IC 8-14.5-7-1) made under IC 8-23-3-11.**

(b) The grant anticipation fund shall be administered by the department. The treasurer of state shall invest the money in the grant anticipation fund not currently needed to meet the obligations of the grant anticipation fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the grant anticipation fund.

(c) Money in the grant anticipation fund at the end of a state fiscal year does not revert to the state general fund.

(d) The department may use the money in the grant anticipation fund only to pay the following costs:

(1) The cost of construction or reconstruction of a highway improvement project.

(2) The cost of acquisition of all land, rights-of-way, property, rights, easements, and any other legal or equitable interests acquired by the department for the construction or reconstruction of a highway improvement project, including the cost of any relocations incident to the acquisition.

(3) The cost of demolishing or removing any buildings, structures, or improvements on property acquired by the department for the construction or reconstruction of a highway improvement project.

(4) Engineering and legal expenses and the costs of plans, specifications, surveys, estimates, and any necessary feasibility studies.

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(5) Payment of rentals and performance of other obligations under contracts or leases relating to highway improvement projects securing grant anticipation revenue bonds or notes issued under IC 8-14.5-7. However, amounts in the grant anticipation fund may not be pledged to such payments.

(e) A holder of grant anticipation revenue bonds or notes issued under IC 8-14.5-7 may not compel the payment of federal transportation revenues to the department.

SECTION 8. IC 8-14.5-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. "Bonds" refers to bonds of the authority issued under IC 8-14.5-6 **or IC 8-14.5-7**.

SECTION 9. IC 8-14.5-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. "Notes" refers to notes of the authority issued under IC 8-14.5-6 **or IC 8-14.5-7** and includes any evidences of indebtedness of the authority except bonds.

SECTION 10. IC 8-14.5-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. The department shall pay lease rentals for leases entered into under this chapter **and securing bonds issued under IC 8-14.5-6** from revenues transferred to the state highway road construction and improvement fund or the crossroads 2000 fund before making any other disbursements from those ~~revenues~~ **funds. The department shall pay lease rentals for leases entered into under this chapter and securing grant anticipation revenue bonds or notes issued under IC 8-14.5-7 from federal transportation revenues (as defined in IC 8-14.5-7-1) transferred to the grant anticipation fund before making any other disbursements from the grant anticipation fund.**

SECTION 11. IC 8-14.5-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 7. Grant Anticipation Revenue Bonds and Notes

Sec. 1. As used in this chapter, "federal transportation revenues" means:

- (1) money and obligation authority apportioned or allocated, or anticipated to be apportioned or allocated in the current federal fiscal year or a future federal fiscal year, to Indiana by the United States Department of Transportation under 23 U.S.C., as amended, for use on a project; or
- (2) other federal money that may be used for a project and is available or anticipated to be available in the current federal fiscal year or a future federal fiscal year.

Sec. 2. As used in this chapter, "grant anticipation revenue

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bond" or "grant anticipation revenue note" means a bond or note, respectively, secured by lease rentals relating to highway improvement projects and anticipated to be paid from federal transportation revenues deposited in the grant anticipation fund.

Sec. 3. As used in this chapter, "highway improvement project" means a project for which the department may use federal transportation revenues.

Sec. 4. The authority may, by resolution, issue grant anticipation revenue bonds or notes for any purpose that is authorized by IC 8-14.5-6 and for which the department may use federal transportation revenues. When issuing grant anticipation revenue bonds or notes, the authority is subject to the provisions of 25 IAC 5 concerning equal opportunities for minority business enterprises and women's business enterprises to participate in procurement and contracting processes.

Sec. 5. (a) Before grant anticipation revenue bonds or notes may be issued under this chapter, the department shall prepare a revenue declaration providing a specified amount or percentage of federal transportation revenues received by the state during a state fiscal year to be deposited in the grant anticipation fund and the number of years those deposits shall be made. A revenue declaration prepared under this section is subject to approval of the budget agency and the authority.

(b) The total amount of lease rentals securing grant anticipation revenue bonds or notes issued under this chapter and scheduled to be paid during any state fiscal year, determined as of the date of issuance of each series of grant anticipation revenue bonds or notes, may not exceed an amount equal to fifty percent (50%) of the remainder of:

(1) the total amount of federal transportation revenues apportioned or allocated to the department during the federal fiscal year immediately preceding the state fiscal year in which such series of bonds or notes is issued; minus

(2) seven hundred sixteen million seventy-four thousand three hundred eighteen dollars (\$716,074,318), which is the total amount of federal transportation revenues apportioned or allocated to the department during the federal fiscal year beginning October 1, 2001, and ending September 30, 2002.

(c) All other provisions of IC 8-14.5-6 apply to the issuance of grant anticipation revenue bonds or notes under this chapter.

Sec. 6. Grant anticipation revenue bonds or notes:

(1) constitute the corporate obligations of the authority;

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(2) do not constitute an indebtedness of the state within the meaning or application of any constitutional provision or limitation; and

(3) are payable solely as to both principal and interest from:

(A) the revenues from a lease to the department, if any;

(B) proceeds of bonds or notes, if any; or

(C) investment earnings on proceeds of bonds or notes, if any.

SECTION 12. IC 8-14.6 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

ARTICLE 14.6. LEASE FINANCING FOR LOCAL ROAD PROJECTS

Chapter 1. Legislative Findings of Fact

Sec. 1. The general assembly makes the following findings of fact:

(1) That there exists in cities, towns, and counties in Indiana a need for construction, acquisition, reconstruction, improvement, and extension of local roads in order to provide for the public welfare and safety by providing safe, dependable, and reliable local roads for vehicular traffic.

(2) That the development and maintenance of the economy of Indiana's cities, towns, and counties requires an adequate system of local roads in order to provide for the public welfare and to facilitate the creation and maintenance of jobs, the increase and stabilization of the tax base, and the general economic welfare of cities, towns, and counties and their citizens.

(3) That it is necessary to serve the public interest and to provide for the public welfare by adopting this article for the purposes described in this article.

Sec. 2. This article provides an additional and alternative method for doing the things authorized by this article, and is supplemental and additional to powers conferred by other laws and not in derogation of any other powers.

Sec. 3. This article is necessary for the welfare of the cities, towns, and counties of Indiana and their inhabitants, and shall be liberally construed to effect the purposes of this article.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Authority" refers to the Indiana transportation finance

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authority established by IC 8-9.5-8-2.

Sec. 3. "Bonds" refers to bonds of the authority issued under IC 8-14.6-6.

Sec. 4. "Capitalized interest" means interest cost on bonds or notes before and during the period of construction of the local road project for which the bonds or notes were issued, and for a period not to exceed one (1) year after completion of construction.

Sec. 5. "Construction" means the construction, acquisition, reconstruction, improvement, and extension of a local road project.

Sec. 6. "Costs" as applied to any local road project includes any item or cost of a capital nature incurred in the construction of a local road project, including:

- (1) the cost of construction;
- (2) the cost of acquisition of all land, rights-of-way, property, rights, easements, and any other legal or equitable interests acquired by the authority for the construction, including the cost of any relocations incident to the acquisition;
- (3) the cost of demolishing or removing any buildings, structures, or improvements on property acquired by the authority, including the cost of:
 - (A) acquiring any property to which the buildings, structures, or improvements may be moved; or
 - (B) acquiring any property that may be exchanged for property acquired by the authority;
- (4) financing charges;
- (5) costs of issuance of bonds or notes, including costs of credit enhancement, such as bond or note insurance;
- (6) remarketing or conversion fees;
- (7) bond or note discount;
- (8) capitalized interest;
- (9) the cost of funding any reserves to secure the payment of bonds or notes;
- (10) engineering and legal expenses, costs of plans, specifications, surveys, estimates, and any necessary feasibility studies;
- (11) other expenses necessary or incident to determining the feasibility or practicability of constructing any local road project;
- (12) administrative expenses of the authority or one (1) or more local units relating to any local road project financed by bonds or notes;
- (13) reimbursement of one (1) or more local units for:

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(A) any cost, obligation, or expense incurred by the local unit or units relating to a local road project;

(B) advances relating to a local road project from the local unit or units to the authority for surveys, borings, preparation of plans and specifications, or engineering services; or

(C) any other cost of construction incurred by the local unit or units or paid from advances; and

(14) other expenses the authority finds necessary or incident to the construction of the local road project, the financing of the construction, and the placing of the local road project in operation.

Sec. 7. "Local road project" means any:

- (1) road;
- (2) street;
- (3) motorway;
- (4) bridge;
- (5) tunnel;
- (6) overpass;
- (7) underpass;
- (8) interchange;
- (9) entrance;
- (10) approach; or
- (11) other public way;

that is part of the arterial road system, local county roads, arterial street system, or local streets for a local unit for purposes of IC 8-14-2. The term includes all land, rights-of-way, property, rights, easements, materials, and legal or equitable interests necessary for the construction of the local road project.

Sec. 8. "Local unit" means a city, town, or county acting through its fiscal body (as defined in IC 36-1-2-6).

Sec. 9. "Notes" refers to notes of the authority issued under IC 8-14.6-6 and includes any evidences of indebtedness of the authority except bonds.

Sec. 10. "Property owner" means all individuals, copartnerships, associations, governmental units or entities, corporations, limited liability companies, or other legal entities having any title or interest in any land, rights-of-way, property, rights, easements, or legal or equitable interests that may be acquired by the authority.

Sec. 11. "Weighted average life" of an issue of bonds or notes means:

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(1) the sum of the products of the face amount of each maturity and the number of years to maturity (determined separately for each maturity and by taking into account mandatory sinking fund redemptions); divided by

(2) the face amount of the entire issue of bonds or notes.

Sec. 12. "Weighted average useful life" of a local road project or local road projects means:

(1) the sum of the products of the cost of each asset comprising the local road project or local road projects and the useful life of the respective asset; divided by

(2) the total cost of all the assets comprising the local road project or local road projects.

For purposes of this computation, the useful life of land is fifty (50) years. The useful life of all other assets comprising the local road project shall be conclusively evidenced by a certificate of the local unit, supported by a statement from the local unit's consulting engineer. The weighted average useful life of any local road project shall be determined as of the later of the date on which the local road project is expected to be placed in service and the date on which the bonds or notes are issued.

Chapter 3. General Provisions

Sec. 1. The authority shall contract with one (1) or more local units for construction, ownership, maintenance, and operation of local road projects.

Sec. 2. The authority shall finance local road projects in accordance with this article.

Sec. 3. The authority may exercise any powers provided under this article in participation or cooperation with any governmental entity and enter into any contracts to facilitate that participation or cooperation without compliance with any other statute. This article constitutes complete authority for the authority to carry out its powers and duties under this article. No law, procedure, proceedings, publications, notices, consents, approvals, orders, or acts by the authority or any other officer, department, agency, or instrumentality of the state or any political subdivision are required for the authority to carry out its powers and duties, except as prescribed in this article.

Sec. 4. The authority may pay the cost of construction of a local road project from any funds available to the authority under this article or any other law.

Sec. 5. The authority may sell, transfer, lease, or otherwise convey any land, rights-of-way, property, rights, easements, or

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1 legal or equitable interest it considers necessary or convenient for
 2 carrying out this article, including disposal of unused or surplus
 3 property.

4 Sec. 6. The authority may acquire by purchase, whenever it
 5 considers a purchase expedient, any land, rights-of-way, property,
 6 rights, easements, or other legal or equitable interests as it
 7 considers necessary or convenient for the construction and
 8 operation of any local road project. A purchase under this section
 9 shall be made upon the terms and at the price agreed upon between
 10 the authority and the property owner.

11 Sec. 7. The authority may make and enter into all contracts and
 12 agreements necessary or incidental to the performance of its duties
 13 and the execution of its powers under this article or any other law.
 14 These contracts or agreements are not subject to any approvals
 15 other than the approval of the authority and may be for any term
 16 of years and contain any terms that are considered reasonable by
 17 the authority.

18 Sec. 8. The authority may employ and fix the compensation of
 19 financial advisors and underwriters, bond counsel, other attorneys
 20 with the approval of the attorney general, and other employees,
 21 independent contractors, and agents as necessary in its judgment
 22 to carry out this article. The authority is subject to the provisions
 23 of 25 IAC 5 concerning equal opportunities for minority business
 24 enterprises and women's business enterprises to participate in
 25 procurement and contracting processes.

26 Sec. 9. The authority may accept gifts, devises, bequests, grants,
 27 appropriations, revenue sharing, other financing and assistance,
 28 and any other aid from any source and agree to and comply with
 29 conditions attached to the aid.

30 Sec. 10. The authority may accept the transfer of any local road
 31 project to the authority.

32 Sec. 11. (a) Except as provided in subsection (b), the authority
 33 may, in the manner provided by IC 8-23-7, acquire by
 34 appropriation any land, rights-of-way, property, rights, easements,
 35 or other legal or equitable interests necessary or convenient for the
 36 construction or the efficient operation of any local road project.
 37 However, compensation for the property taken shall first be made
 38 in money as provided by law.

39 (b) The authority may take or disturb property or facilities that:

40 (1) belong to any public utility or to a common carrier
 41 engaged in interstate commerce;

42 (2) are required for the proper and convenient operation of

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the public utility or common carrier; and
 (3) are not located within the limits of local road projects
 being constructed under this article;
 only if provision is made for the restoration, relocation, or
 duplication of the property or facilities elsewhere at the cost of the
 authority.

Sec. 12. The authority may do all things necessary or proper to
 carry out this article.

Sec. 13. A local unit may convey, transfer, lease, or sell, with or
 without consideration, real property of any nature (including
 buildings, structures, improvements, land, rights-of-way,
 easements, and legal or equitable interests), title to which is held in
 the name of the local unit, to the authority, without being required
 to advertise or solicit bids or proposals, in order to accomplish the
 governmental purposes of this article.

Sec. 14. All property of the authority is public property devoted
 to an essential public and governmental function and purpose and
 is exempt from all taxes and special assessments of the state or any
 political subdivision of the state.

Chapter 4. Contracts With Local Units

Sec. 1. The authority is responsible for the construction, leasing,
 and ownership of local road projects. With respect to each local
 road project, the authority and one (1) or more local units may
 enter into a contract for the purposes set forth in this chapter. If
 the authority and the local unit or units decide to enter into a
 contract under this chapter, the authority and the local unit or
 units may enter into a separate contract for each local road project
 or a master contract for several local road projects.

Sec. 2. A contract under this chapter must:

- (1) provide for the construction and ownership of the local
 road project; and
- (2) describe the local road project or local road projects,
 setting forth in general terms principal features such as
 geographic location, widths of rights-of-way, number of lanes
 in each direction, width of traffic lanes, widths of shoulders,
 location and nature of tunnels, overpasses, underpasses,
 interchanges, bridges, approaches, and connecting roads,
 streets, and highways.

Sec. 3. The contract may include the following:

- (1) Provisions for payment by the authority to the local unit
 or units of all costs incurred by the local unit or units in the
 performance of the contracts, including all costs of

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1 construction, salaries, wages, and associated costs of
2 personnel attributable to performance of the contract.

3 (2) Other terms and conditions that the authority and the
4 local unit or units consider appropriate.

5 Sec. 4. Notwithstanding any other law, a local unit may enter
6 into a contract with the authority by negotiating the contract with
7 the authority and without complying with the requirements of any
8 other law. A local unit shall observe any existing contractual
9 commitments to the holders of bonds or notes or other persons
10 when entering into a contract.

11 Chapter 5. Leases With Local Units

12 Sec. 1. (a) In addition to its other powers, one (1) or more local
13 units may enter into a lease or leases with the authority under
14 section 2 or 3 of this chapter for any or all of the purposes set forth
15 in this article. Notwithstanding any other law, a local unit may
16 enter into a lease with the authority by negotiating the lease with
17 the authority and without complying with the requirements of any
18 other law. A local unit shall observe any existing contractual
19 commitments to the holders of bonds or notes or other persons
20 when entering into a lease.

21 (b) The authority has all the powers necessary and incidental to
22 carry out the terms and conditions of leases under this chapter.

23 (c) If the authority and one (1) or more local units decide to
24 enter into a lease under this chapter, the authority and the local
25 unit or units may enter into a separate lease for each local road
26 project or may enter into one (1) or more master leases for several
27 local road projects.

28 Sec. 2. (a) A lease entered into under this section must include
29 the following:

30 (1) A statement that the term of the lease is for a period
31 coextensive with the biennium used for state budgetary and
32 appropriation purposes with a fractional period when the
33 lease begins, if necessary.

34 (2) A statement that the term of the lease is extended from
35 biennium to biennium, with the extensions not to exceed a
36 lease term of twenty-five (25) years, unless either the
37 authority or the local unit or units give notice of nonextension
38 at least six (6) months before the end of a biennium, in which
39 event the lease expires at the end of the biennium in which the
40 notice is given.

41 (3) A provision plainly stating that the lease does not
42 constitute an indebtedness of the state or any local unit within

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the meaning or application of any constitutional provision or limitation, and that lease rentals are payable by the local unit or units solely from the sources described in section 6 of this chapter, for the actual use or availability for use of local road projects provided by the authority, with payment commencing not earlier than the time the use or availability commences.

(4) Provisions requiring the local unit or units to pay rent at times and in amounts sufficient to pay in full:

(A) the debt service payable under the terms of any bonds or notes issued by the authority and outstanding with respect to any local road project, including any required additions to reserves for the bonds or notes maintained by the authority; and

(B) additional rent as provided by the lease; subject to the appropriation of money by the local unit or units to pay lease rentals.

(5) Provisions requiring the local unit or units to operate and maintain the local road project or local road projects during the term of the lease.

(6) A provision in each master lease for two (2) or more local road projects requiring that each local road project added to the master lease shall be covered by a supplemental lease describing the particular local road project, stating the additional rental payable and providing that all lease covenants, including the obligation to pay the original and additional rent under any supplement, shall be unitary and include all local road projects covered, whether by the master lease or a supplemental lease.

(b) A lease entered into under this section may contain other terms and conditions that the authority and the local unit or units consider appropriate.

(c) The fiscal officer (as defined in IC 36-1-2-7) of the local unit shall request an appropriation from the local unit for payment of lease rentals on any lease entered into under this section in writing at a time sufficiently in advance of the date for payment of the lease rentals so that an appropriation may be made in the normal budgetary process of the local unit.

Sec. 3. (a) A lease entered into under this section must include the following:

(1) The term of the lease, which may not exceed the weighted average useful life of the local road project or local road

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projects.

(2) A provision plainly stating that the lease does not constitute an indebtedness of the state or any local unit within the meaning or application of any constitutional provision or limitation, and that lease rentals are payable by the local unit or units solely for the annual use or availability for use of local road projects provided by the authority, with payment commencing not earlier than the time the use or availability commences.

(3) Provisions requiring the local unit or units to pay rent at times and in amounts sufficient to pay in full the following:

(A) The debt service payable under the terms of any bonds or notes issued by the authority and outstanding with respect to any local road project, including any required additions to reserves for the bonds or notes maintained by the authority.

(B) Additional rent as provided by the lease.

(4) Provisions requiring the local unit or units to operate and maintain the local road project or local road projects during the term of the lease.

(5) A provision in each master lease for two (2) or more local road projects requiring that each local road project added to the master lease shall be covered by a supplemental lease describing the particular local road project, stating the additional rental payable and providing that all lease covenants, including the obligation to pay the original and additional rent under any supplement, shall be unitary and include all local road projects covered, whether by the master lease or a supplemental lease.

(b) A lease entered into under this section may contain other terms and conditions that the authority and the local unit or units consider appropriate.

Sec. 4. If a local unit fails at any time to pay to the authority when due any lease rentals on any lease under this chapter, the chairman of the authority shall immediately report the unpaid amount in writing to the general assembly and the governor.

Sec. 5. A local unit or units may lease any property under its control to the authority for construction of a local road project, which local road project may be leased to the local unit or units.

Sec. 6. (a) A local unit shall pay lease rentals for leases entered into under this chapter from revenues from any combination of the following sources:

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(1) Money payable to the local unit from the motor vehicle highway account.

(2) Money payable to the local unit from the local road and street account.

(3) Revenues from the county motor vehicle excise surtax.

(4) Revenues from the county wheel tax.

(5) Federal transportation revenues apportioned or allocated to the state and distributed to the local unit by the Indiana department of transportation.

(6) Any other source of revenues (other than property taxes) that is legally available to the local unit.

(b) A local unit may, in the manner provided by IC 5-1-14-4, pledge the revenues described in this section for the payment of lease rentals. However, in making a pledge the local unit shall not commit money required to provide adequate funding for other local road needs.

Sec. 7. If a local unit pledges money from the motor vehicle highway account or the local road and street account, or both, for the payment of lease rentals for leases entered into under this chapter, the local unit shall immediately provide the auditor of state with a written notice setting forth the terms of the pledge and directing the auditor of state to:

(1) withhold the amounts pledged from the distributions that are otherwise payable to the local unit under IC 8-14-1-3 or IC 8-14-2-4, or both; and

(2) pay the amounts withheld to the authority.

Notwithstanding IC 8-14-1-3 and IC 8-14-2-4, the auditor of state shall withhold and pay to the authority the amounts specified in the notice.

Sec. 8. Notwithstanding any other provision of law, to the extent that any department or agency of the state, including the treasurer of state, is the custodian of money payable to a local unit (other than for goods or services provided by the local unit), at any time after written notice to the department or agency head from the authority that the local unit is in default on the payment of lease rentals for a lease entered into under this chapter, the department or agency shall withhold the payment of that money from the local unit and pay over the money to the authority for the purpose of paying the lease rentals.

Sec. 9. The requirements of sections 7 and 8 of this chapter to withhold amounts due under a lease do not create a debt of the state or a local unit for purposes of the Constitution of the State of

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1 Indiana.

2 Chapter 6. Issuance of Bonds and Notes

3 Sec. 1. Subject to sections 2 and 5 of this chapter, and before
4 July 1, 2007, the authority shall, by resolution, issue and sell bonds
5 or notes of the authority to provide funds to carry out this article
6 with respect to the construction of a local road project or local
7 road projects or the refunding of any bonds or notes, together with
8 any reasonable costs associated with a refunding.

9 Sec. 2. Before the issuance of bonds or notes, the authority must
10 receive the approval of the budget agency.

11 Sec. 3. (a) The construction of a local road project may not be
12 financed under this article if, at the time the lease with respect to
13 the local road project is initially entered into, the weighted average
14 useful life of the local road project is less than five (5) years.

15 (b) For purposes of this section and section 5 of this chapter, a
16 certificate of the local unit, supported by a statement from the local
17 unit's consulting engineer, as to the weighted average useful life of
18 the local road project is conclusive with respect to the matters
19 contained in the certificate.

20 (c) If any bonds or notes bear interest at a variable or
21 adjustable rate, lease rentals under any lease or leases attributable
22 to debt service shall be fixed over the term of the lease or leases
23 based on the fair and reasonable value of the local road project or
24 local road projects leased.

25 Sec. 4. (a) Before issuing a series of bonds or notes, the authority
26 shall publish a notice of its determination to issue the bonds or
27 notes. The notice shall be published:

28 (1) one (1) time in two (2) newspapers published and of
29 general circulation in the city of Indianapolis; and

30 (2) one (1) time in one (1) newspaper published and of general
31 circulation in each local unit that proposes to enter into a
32 lease of the local road projects to be financed by the bonds or
33 notes.

34 (b) No action to contest the validity of:

35 (1) any contract entered into by one (1) or more local units
36 and the authority before the bonds or notes are issued;

37 (2) any lease entered into by one (1) or more local units and
38 the authority before the bonds or notes are issued to secure a
39 series of bonds or notes; or

40 (3) a series of bonds or notes issued by the authority;

41 may be brought against the authority after the fifteenth day
42 following publication of the notice required by subsection (a)(1) or

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1 against a local unit after the fifteenth day following publication of
2 the notice under subsection (a)(2).

3 (c) If a lease or contract is entered into under this chapter after
4 bonds or notes relating to the lease or contract are issued, the
5 authority may publish notice of execution of the lease or contract
6 as set forth in subsection (a). No action against the authority to
7 contest the validity of such a lease or contract may be brought after
8 the fifteenth day following publication of the notice under
9 subsection (a)(1) or against a local unit after the fifteenth day
10 following publication of the notice under subsection (a)(2).

11 (d) If an action against the authority or a local unit challenging
12 a lease, a contract, bonds, or notes is not brought within the time
13 prescribed by this section, the lease, contract, bonds, or notes shall
14 be conclusively presumed to be fully authorized and valid under
15 the laws of the state and any person or entity is estopped from
16 further questioning the authorization, validity, execution, delivery,
17 or issuance of the contract, lease, bonds, or notes.

18 **Sec. 5. (a) The bonds or notes must indicate on their face:**

- 19 (1) the maturity date or dates, as determined under subsection
- 20 (b);
- 21 (2) the interest rate or rates (whether fixed, variable, or a
- 22 combination of fixed and variable) or the manner in which the
- 23 interest rate or rates will be determined if variable or
- 24 adjustable rates are used;
- 25 (3) registration privileges and place of payment, including
- 26 provisions for book entry obligations as set forth in IC 5-1-15;
- 27 (4) the conditions and terms under which the bonds or notes
- 28 may be redeemed or prepaid before maturity; and
- 29 (5) the source of payment as set forth in section 10 of this
- 30 chapter.

31 (b) The weighted average life of the bonds or notes may not
32 exceed the sum of:

- 33 (1) the weighted average useful life of the local road project or
- 34 local road projects to be financed from the proceeds of the
- 35 bonds or notes; plus
- 36 (2) the period of construction of the local road project or local
- 37 road projects.

38 **Sec. 6. The bonds or notes:**

- 39 (1) shall be executed by the manual or facsimile signature of
- 40 the chairman or vice chairman of the authority;
- 41 (2) shall be attested by the manual or facsimile signature of
- 42 the secretary-treasurer or assistant secretary-treasurer of the

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authority;

(3) shall be imprinted or impressed with the seal of the authority by any means;

(4) may be authenticated by a trustee, registrar, or paying agent; and

(5) constitute valid and binding obligations of the authority, even if the chairman, vice chairman, secretary-treasurer, or assistant secretary-treasurer whose manual or facsimile signature appears on the bonds or notes no longer holds that office.

Sec. 7. The bonds or notes, when issued, have all the qualities of negotiable instruments, subject to provisions for registration, under IC 26 and are incontestable in the hands of a bona fide purchaser or owner of the bonds or notes for value.

Sec. 8. The bonds or notes may be sold by the authority at a public or a negotiated sale at a time or times determined by the authority and at a premium or discount as determined by the authority. In determining the amount of bonds or notes to be issued and sold, the authority may include the costs of construction or of refunding bonds or notes, including reasonable debt service reserves, and all other expenses necessary or incident to the construction of the local road project, a refunding, or the issuance of the bonds or notes.

Sec. 9. The proceeds of the bonds or notes are appropriated for the purpose for which the bonds or notes may be issued and the proceeds shall be deposited and disbursed in accordance with any provisions and restrictions that the authority may provide in the resolution or trust agreement authorizing the issuance of the bonds or notes. The maturities of the bonds or notes, the rights of the owners, and the rights, duties, and obligations of the authority are governed in all respects by this article and the resolution or trust agreement.

Sec. 10. The bonds or notes:

(1) constitute the corporate obligations of the authority;

(2) do not constitute an indebtedness of the state or any local unit within the meaning or application of any constitutional provision or limitation; and

(3) are payable solely as to both principal and interest from:

(A) the revenues from a lease to one (1) or more local units, if any;

(B) proceeds of bonds or notes, if any; or

(C) investment earnings on proceeds of bonds or notes.

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1 **Sec. 11. The provisions of this article and the covenants and**
 2 **undertakings of the authority as expressed in any proceedings**
 3 **preliminary to or in connection with the issuance of the bonds or**
 4 **notes may be enforced, subject to the provisions of any resolution**
 5 **or trust agreement, by a bond or note owner by action for**
 6 **injunction or mandamus against the authority or any officer,**
 7 **agent, or employee of the authority. However, no action for**
 8 **monetary judgment may be brought against the state for any**
 9 **violations of this article or for payment of the bonds or notes of the**
 10 **authority.**

11 **Sec. 12. All bonds or notes issued under this article are issued by**
 12 **a body corporate and politic of this state, but not a state agency,**
 13 **and for an essential public and governmental purpose. The bonds**
 14 **and notes, the interest on the bonds and notes, the proceeds**
 15 **received by an owner from the sale of the bonds or notes to the**
 16 **extent of the owner's cost of acquisition, proceeds received upon**
 17 **redemption for maturity, proceeds received at maturity, and the**
 18 **receipt of the interest and proceeds are exempt from taxation for**
 19 **all purposes except the financial institutions tax imposed under**
 20 **IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1.**

21 **Sec. 13. Notwithstanding any other law, all financial institutions,**
 22 **investment companies, insurance companies, insurance**
 23 **associations, executors, administrators, guardians, trustees, and**
 24 **other fiduciaries may legally invest sinking funds, money, or other**
 25 **funds belonging to them or within their control in bonds or notes**
 26 **issued under this chapter.**

27 **Sec. 14. Bonds or notes issued under this chapter are exempt**
 28 **from the registration requirements of IC 23-2-1 and any other state**
 29 **securities registration statutes.**

30 **Sec. 15. A pledge of lease rentals, proceeds of bonds or notes,**
 31 **investment earnings on those proceeds, or other money pledged by**
 32 **the authority is binding from the time the pledge is made. Lease**
 33 **rentals, proceeds of bonds or notes, investment earnings on those**
 34 **proceeds, or other money pledged by the authority and thereafter**
 35 **received by the authority or its trustee or fiduciary is immediately**
 36 **subject to the lien of the pledge without any further act, and the**
 37 **lien of the pledge is binding against all parties having claims of any**
 38 **kind in tort, contract, or otherwise against the authority,**
 39 **regardless of whether the parties have notice of the lien. A**
 40 **resolution, trust agreement, or any other instrument by which a**
 41 **pledge is created is required to be filed or recorded only in the**
 42 **records of the authority.**

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1 Sec. 16. The authority may obtain from a department or an
2 agency of the state or of the United States, or from a
3 nongovernmental insurer, available insurance or guaranty for the
4 payment or repayment of interest or principal, or both, or any part
5 of interest or principal, or any debt service reserve funds, on bonds
6 or notes issued by the authority, or on securities purchased or held
7 by the authority.

8 Sec. 17. The authority may enter into agreements with an entity
9 to provide credit enhancement or liquidity support for any bonds
10 or notes issued by the authority, or for any debt service reserves
11 securing any bonds or notes, with terms that are reasonable and
12 proper, in the discretion of the authority, and not in violation of
13 law. The authority may execute and deliver notes to evidence its
14 obligation to make payments under such an agreement, but these
15 notes must conform to this article in all respects.

16 Sec. 18. The authority may enter into agreements or contracts
17 with any financial institution as may be necessary, desirable, or
18 convenient in the opinion of the authority for rendering services in
19 connection with:

- 20 (1) the care, custody, or safekeeping of securities or other
- 21 investments held or owned by the authority;
- 22 (2) the payment or collection of amounts payable as to
- 23 principal or interest; and
- 24 (3) the delivery to the authority of securities or other
- 25 investments purchased or sold by it.

26 The authority may also, in connection with any of the services
27 rendered by a financial institution as to custody and safekeeping of
28 its securities or investments, require security in the form of
29 collateral bonds, surety agreements, or security agreements as, in
30 the opinion of the authority, is necessary or desirable.

31 Sec. 19. (a) In the discretion of the authority, any bonds and
32 notes issued under this chapter may be secured by a trust
33 agreement by and between the authority and a corporate trustee,
34 which may be any trust company or bank having the powers of a
35 trust company in Indiana. Such a trust agreement may also
36 provide for a cotrustee, which may be any trust company or bank
37 in Indiana or another state.

38 (b) The trust agreement or the resolution providing for the
39 issuance of the bonds or notes may contain provisions for
40 protecting and enforcing the rights and remedies of the owners of
41 bonds or notes as may be reasonable and proper, in the discretion
42 of the authority, and not in violation of law.

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(c) The trust agreement or resolution may set forth the rights and remedies of the owners of any bonds or notes of the trustee and may restrict the individual right of action by the owners.

(d) Any trust agreement or resolution may contain other provisions that the authority considers reasonable and proper for the security of the owners of bonds or notes.

(e) All expenses incurred in carrying out the provisions of the trust agreement or resolution may be paid from money pledged or assigned to the payment of the principal of and interest on bonds or notes or from any other funds available to the authority.

Sec. 20. The authority may purchase bonds or notes of the authority out of its funds or money available for the purchase of its own bonds or notes. The authority may hold, cancel, or resell the bonds or notes subject to, and in accordance with, agreements with owners of its bonds or notes. Unless canceled, bonds or notes so held shall be considered to be held for resale or transfer and the obligation evidenced by the bonds or notes shall not be considered to be extinguished.

Sec. 21. Funds or money held by the authority under any trust agreement or resolution may be invested pending disbursement as provided in the trust agreement or the resolution. Such an investment is not restricted by or subject to the provisions of any other law.

Chapter 7. Reserve Fund for Bonds and Notes

Sec. 1. (a) The authority may establish and maintain a reserve fund for each issue of bonds or notes in which there shall be deposited or transferred:

(1) all money appropriated by the general assembly for the purpose of the fund in accordance with section 3(a) of this chapter;

(2) all proceeds of bonds or notes required to be deposited in the fund under the terms of:

(A) a contract between the authority and the holders of the bonds or notes; or

(B) a resolution of the authority with respect to the proceeds of bonds or notes;

(3) all other money appropriated by the general assembly to a reserve fund; and

(4) any other money or funds of the authority that the authority decides to deposit in the fund.

(b) Subject to section 3(b) of this chapter, money in any reserve fund shall be held and applied solely to the payment of the interest

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on and principal of bonds or notes of the authority as the interest and principal become due and payable and for the retirement of bonds or notes. The money may not be withdrawn if a withdrawal would reduce the amount in the reserve fund to an amount less than the required debt service reserve, except for payment of interest then due and payable on bonds or notes and the principal of bonds or notes then maturing and payable, whether by reason of maturity or mandatory redemption, for which payments other money of the bank is not then available. As used in this chapter, "required debt service reserve" means, as of the date of computation, the amount required to be on deposit in the reserve fund as provided by resolution or trust agreement of the authority.

(c) Money in any reserve fund that exceeds the required debt service reserve, whether by reason of investment or otherwise, may be withdrawn at any time by the authority and transferred to another fund or account of the authority, subject to the provisions of any agreement with the holders of any bonds or notes.

Sec. 2. For purposes of valuation, investments in the reserve fund shall be valued at par, or if purchased at less than par, at cost unless otherwise provided by resolution or trust agreement of the authority. Valuation on a particular date shall include the amount of interest then earned or accrued to that date on the money or investments in the reserve fund.

Sec. 3. (a) In order to assure the maintenance of the required debt service reserve in any reserve fund, the general assembly may annually appropriate to the authority for deposit in one (1) or more of the funds the sum, certified by the authority to the general assembly, that is necessary to restore one (1) or more of the funds to an amount equal to the required debt service reserve. Before December 1 of each year, the authority shall make and deliver to the general assembly a certificate stating the sum required to restore the funds to that amount. Nothing in this subsection creates a debt or liability of the state to make any appropriation.

(b) All amounts received on account of money appropriated by the state to any reserve fund shall be held and applied in accordance with section 1(b) of this chapter. However, at the end of each fiscal year, if the amount in any reserve fund exceeds the required debt service reserve, any amount representing earnings or income received on account of any money appropriated to the reserve fund that exceeds the expenses of the authority for that fiscal year may be transferred to the state general fund.

Sec. 4. Subject to the provisions of any agreement with its

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holders, the bank may combine a reserve fund established for an issue of bonds or notes into one (1) or more reserve funds.

SECTION 13. IC 8-23-3-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 11. Notwithstanding any other provision of this chapter, if grant anticipation revenue bonds or notes have been issued under IC 8-14.5-7, the department shall collect or cause to be collected federal transportation revenues (as defined in IC 8-14.5-7-1) and shall, as provided by the department in the revenue declaration relating to the issuance of the grant anticipation revenue bonds or notes, deposit or cause to be deposited the specified part of the federal transportation revenues in the grant anticipation fund established by IC 8-14-10-10.**

SECTION 14. IC 9-20-5-4, AS AMENDED BY P.L.147-2002, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4.** In addition to the highways established and designated as heavy duty highways under section 1 of this chapter, the following highways are designated as extra heavy duty highways:

- (1) Highway 41, from 129th Street in Hammond to Highway 312.
- (2) Highway 312, from Highway 41 to State Road 912.
- (3) Highway 912, from Michigan Avenue in East Chicago to the U.S. 20 interchange.
- (4) Highway 20, from Clark Road in Gary to Highway 39.
- (5) Highway 12, from one-fourth (1/4) mile west of the Midwest Steel entrance to Highway 249.
- (6) Highway 249, from Highway 12 to Highway 20.
- (7) Highway 12, from one and one-half (1 1/2) miles east of the Bethlehem Steel entrance to Highway 149.
- (8) Highway 149, from Highway 12 to a point thirty-six hundredths (.36) of a mile south of Highway 20.
- (9) Highway 39, from Highway 20 to the Michigan state line.
- (10) Highway 20, from Highway 39 to Highway 2.
- (11) Highway 2, from Highway 20 to Highway 31.
- (12) Highway 31, from the Michigan state line to Highway 23.
- (13) Highway 23, from Highway 31 to Olive Street in South Bend.
- (14) Highway 35, from South Motts Parkway thirty-four hundredths (.34) of a mile southeast to the point where Highway 35 intersects with the overpass for Highway 20/Highway 212.
- (15) State Road 249 from U.S. 12 to the point where State Road 249 intersects with Nelson Drive at the Port of Indiana.
- (16) State Road 912 from the 15th Avenue and 169th Street

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1 interchange one and six hundredths (1.06) miles north to the U.S.
 2 20 interchange.
 3 (17) U.S. 20 from the State Road 912 interchange three and
 4 seventeen hundredths (3.17) miles east to U.S. 12.
 5 **(18) U.S. 6 from the Ohio state line to State Road 9.**
 6 **(19) U.S. 30 from Allen County/Whitley County Line Road**
 7 **(also known as County Road 800 East) to State Road 9.**
 8 **(20) State Road 9 from U.S. 30 to U.S. 6.**
 9 SECTION 15. An emergency is declared for this act.

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SENATE MOTION

Madam President: I move that Senator Garton be removed as author of Senate Bill 19 and that Senator Meeks C be substituted therefor.

GARTON

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COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 19, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Transportation and Homeland Security.

(Reference is to SB 19 as introduced.)

GARTON, Chairperson

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SENATE MOTION

Madam President: I move that Senator Meeks R be added as second author of Senate Bill 19.

MEEKS C

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COMMITTEE REPORT

Madam President: The Senate Committee on Transportation and Homeland Security, to which was referred Senate Bill No. 19, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, delete line 18.

Page 2, line 19, delete "(20)" and insert "**(19)**".

Page 2, line 19, delete "county/Whitley county line road" and insert "**County/Whitley County Line Road**".

Page 2, line 21, delete "(21)" and insert "**(20)**".

Page 2, line 21, delete "the Michigan state line." and insert "**U.S. 6.**".

and when so amended that said bill do pass.

(Reference is to SB 19 as printed January 23, 2004.)

WYSS, Chairperson

Committee Vote: Yeas 7, Nays 0.

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SENATE MOTION

Madam President: I move that Senators Long and Dillon be added
as coauthors of Senate Bill 19.

MEEKS R

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Roads and Transportation, to which was referred Senate Bill 19, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

RESKE, Chair

Committee Vote: yeas 12, nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 19, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning transportation.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-3.5-4-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12. In the case of a county that contains a consolidated city, the city-county council may appropriate money derived from the surtax to:

- (1) the department of transportation established by IC 36-3-5-4 for use by the department under law; **or**
- (2) the Indiana transportation finance authority for the payment of lease rentals under IC 8-14.6.**

The city-county council may not appropriate money derived from the surtax for any other purpose.

SECTION 2. IC 6-3.5-4-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. (a) In the case of a county that does not contain a consolidated city of the first class, the county treasurer shall deposit the surtax revenues in a fund to be known as the "_____ County Surtax Fund".

(b) Before the twentieth day of each month, the county auditor shall allocate the money deposited in the county surtax fund during that month among the county and the cities and the towns in the county. The county auditor shall allocate the money to counties, cities, and towns under IC 8-14-2-4(c)(1) through IC 8-14-2-4(c)(3).

(c) Before the twenty-fifth day of each month, the county treasurer shall distribute to the county and the cities and towns in the county the money deposited in the county surtax fund during that month. The county treasurer shall base the distribution on allocations made by the county auditor for that month under subsection (b).

(d) A county, city, or town may only use the surtax revenues it receives under this section to:

- (1) construct, reconstruct, repair, or maintain streets and roads under its jurisdiction; **or**
- (2) provide funds to the Indiana transportation finance authority for the payment of lease rentals under IC 8-14.6.**

SECTION 3. IC 6-3.5-5-14 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 14. (a) In the case of a county that contains a consolidated city, the city-county council may appropriate money derived from the wheel tax to:

- (1) the department of transportation established by IC 36-3-5-4 for use by the department under law; ~~or~~
- (2) an authority established under IC 36-7-23; ~~or~~
- (3) the Indiana transportation finance authority for the payment of lease rentals under IC 8-14.6.**

(b) The city-county council may not appropriate money derived from the wheel tax for any other purpose.

SECTION 4. IC 6-3.5-5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) In the case of a county that does not contain a consolidated city, the county treasurer shall deposit the wheel tax revenues in a fund to be known as the "County Wheel Tax Fund".

(b) Before the twentieth day of each month, the county auditor shall allocate the money deposited in the county wheel tax fund during that month among the county and the cities and the towns in the county. The county auditor shall allocate the money to counties, cities, and towns under IC 8-14-2-4(c)(1) through IC 8-14-2-4(c)(3).

(c) Before the twenty-fifth day of each month, the county treasurer shall distribute to the county and the cities and towns in the county the money deposited in the county wheel tax fund during that month. The county treasurer shall base the distribution on allocations made by the county auditor for that month under subsection (b).

(d) A county, city, or town may only use the wheel tax revenues it receives under this section:

- (1) to construct, reconstruct, repair, or maintain streets and roads under its jurisdiction; ~~or~~
- (2) as a contribution to an authority established under IC 36-7-23; ~~or~~
- (3) provide funds to the Indiana transportation finance authority for the payment of lease rentals under IC 8-14.6.**

SECTION 5. IC 8-14-10-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. The department may use the money in the fund only to pay the following costs:

- (1) The cost of construction or reconstruction of a state highway.
- (2) The cost of acquisition of all land, rights-of-way, property, rights, easements, and any other legal or equitable interests acquired by the department for the construction or reconstruction of a state highway, including the cost of any relocations incident to the acquisition.

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(3) The cost of demolishing or removing any buildings, structures, or improvements on property acquired by the department for the construction or reconstruction of a state highway.

(4) Engineering and legal expenses, and the costs of plans, specifications, surveys, estimates, and any necessary feasibility studies.

(5) Payment of rentals and performance of other obligations under contracts or leases ~~relating to projects securing bonds issued under IC 8-14-5~~ **IC 8-14.5-6**.

SECTION 6. IC 8-14-10-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) The crossroads 2000 fund is established for the purpose of constructing or reconstructing state highways. The crossroads 2000 fund consists of distributions received under IC 9-29-1-2, IC 9-29-15-1, IC 9-29-15-3, and IC 9-29-15-4.

(b) The crossroads 2000 fund shall be administered by the department. The treasurer of state shall invest the money in the crossroads 2000 fund not currently needed to meet the obligations of the crossroads 2000 fund in the same manner as other public funds may be invested.

(c) Money in the crossroads 2000 fund at the end of a state fiscal year does not revert to the state general fund.

(d) The department may use the money in the crossroads 2000 fund only to pay the following costs:

(1) The cost of construction or reconstruction of a state highway.

(2) The cost of acquisition of all land, rights-of-way, property, rights, easements, and any other legal or equitable interests acquired by the department for the construction or reconstruction of a state highway, including the cost of any relocations incident to the acquisition.

(3) The cost of demolishing or removing any buildings, structures, or improvements on property acquired by the department for the construction or reconstruction of a state highway.

(4) Engineering and legal expenses, and the costs of plans, specifications, surveys, estimates, and any necessary feasibility studies.

(5) Payment of rentals and performance of other obligations under contracts or leases ~~relating to projects securing bonds issued under IC 8-14-5~~ **IC 8-14.5-6**.

SECTION 7. IC 8-14-10-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 10. (a) The grant anticipation fund is established to**

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construct and reconstruct state highways. The grant anticipation fund consists of distributions of federal transportation revenues (as defined in IC 8-14.5-7-1) made under IC 8-23-3-11.

(b) The grant anticipation fund shall be administered by the department. The treasurer of state shall invest the money in the grant anticipation fund not currently needed to meet the obligations of the grant anticipation fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the grant anticipation fund.

(c) Money in the grant anticipation fund at the end of a state fiscal year does not revert to the state general fund.

(d) The department may use the money in the grant anticipation fund only to pay the following costs:

- (1) The cost of construction or reconstruction of a highway improvement project.
- (2) The cost of acquisition of all land, rights-of-way, property, rights, easements, and any other legal or equitable interests acquired by the department for the construction or reconstruction of a highway improvement project, including the cost of any relocations incident to the acquisition.
- (3) The cost of demolishing or removing any buildings, structures, or improvements on property acquired by the department for the construction or reconstruction of a highway improvement project.
- (4) Engineering and legal expenses and the costs of plans, specifications, surveys, estimates, and any necessary feasibility studies.
- (5) Payment of rentals and performance of other obligations under contracts or leases relating to highway improvement projects securing grant anticipation revenue bonds or notes issued under IC 8-14.5-7. However, amounts in the grant anticipation fund may not be pledged to such payments.

(e) A holder of grant anticipation revenue bonds or notes issued under IC 8-14.5-7 may not compel the payment of federal transportation revenues to the department.

SECTION 8. IC 8-14.5-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. "Bonds" refers to bonds of the authority issued under IC 8-14.5-6 or **IC 8-14.5-7**.

SECTION 9. IC 8-14.5-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. "Notes" refers to notes of the authority issued under IC 8-14.5-6 or **IC 8-14.5-7** and includes any evidences of indebtedness of the authority except bonds.

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SECTION 10. IC 8-14.5-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. The department shall pay lease rentals for leases entered into under this chapter **and securing bonds issued under IC 8-14.5-6** from revenues transferred to the state highway road construction and improvement fund or the crossroads 2000 fund before making any other disbursements from those ~~revenues~~ **funds. The department shall pay lease rentals for leases entered into under this chapter and securing grant anticipation revenue bonds or notes issued under IC 8-14.5-7 from federal transportation revenues (as defined in IC 8-14.5-7-1) transferred to the grant anticipation fund before making any other disbursements from the grant anticipation fund.**

SECTION 11. IC 8-14.5-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 7. Grant Anticipation Revenue Bonds and Notes

Sec. 1. As used in this chapter, "federal transportation revenues" means:

- (1) money and obligation authority apportioned or allocated, or anticipated to be apportioned or allocated in the current federal fiscal year or a future federal fiscal year, to Indiana by the United States Department of Transportation under 23 U.S.C., as amended, for use on a project; or**
- (2) other federal money that may be used for a project and is available or anticipated to be available in the current federal fiscal year or a future federal fiscal year.**

Sec. 2. As used in this chapter, "grant anticipation revenue bond" or "grant anticipation revenue note" means a bond or note, respectively, secured by lease rentals relating to highway improvement projects and anticipated to be paid from federal transportation revenues deposited in the grant anticipation fund.

Sec. 3. As used in this chapter, "highway improvement project" means a project for which the department may use federal transportation revenues.

Sec. 4. The authority may, by resolution, issue grant anticipation revenue bonds or notes for any purpose that is authorized by IC 8-14.5-6 and for which the department may use federal transportation revenues. When issuing grant anticipation revenue bonds or notes, the authority is subject to the provisions of 25 IAC 5 concerning equal opportunities for minority business enterprises and women's business enterprises to participate in procurement and contracting processes.

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Sec. 5. (a) Before grant anticipation revenue bonds or notes may be issued under this chapter, the department shall prepare a revenue declaration providing a specified amount or percentage of federal transportation revenues received by the state during a state fiscal year to be deposited in the grant anticipation fund and the number of years those deposits shall be made. A revenue declaration prepared under this section is subject to approval of the budget agency and the authority.

(b) The total amount of lease rentals securing grant anticipation revenue bonds or notes issued under this chapter and scheduled to be paid during any state fiscal year, determined as of the date of issuance of each series of grant anticipation revenue bonds or notes, may not exceed an amount equal to fifty percent (50%) of the remainder of:

- (1)** the total amount of federal transportation revenues apportioned or allocated to the department during the federal fiscal year immediately preceding the state fiscal year in which such series of bonds or notes is issued; minus
- (2)** seven hundred sixteen million seventy-four thousand three hundred eighteen dollars (\$716,074,318), which is the total amount of federal transportation revenues apportioned or allocated to the department during the federal fiscal year beginning October 1, 2001, and ending September 30, 2002.

(c) All other provisions of IC 8-14.5-6 apply to the issuance of grant anticipation revenue bonds or notes under this chapter.

Sec. 6. Grant anticipation revenue bonds or notes:

- (1)** constitute the corporate obligations of the authority;
- (2)** do not constitute an indebtedness of the state within the meaning or application of any constitutional provision or limitation; and
- (3)** are payable solely as to both principal and interest from:
 - (A)** the revenues from a lease to the department, if any;
 - (B)** proceeds of bonds or notes, if any; or
 - (C)** investment earnings on proceeds of bonds or notes, if any.

SECTION 12. IC 8-14.6 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

ARTICLE 14.6. LEASE FINANCING FOR LOCAL ROAD PROJECTS

Chapter 1. Legislative Findings of Fact

Sec. 1. The general assembly makes the following findings of

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fact:

(1) That there exists in cities, towns, and counties in Indiana a need for construction, acquisition, reconstruction, improvement, and extension of local roads in order to provide for the public welfare and safety by providing safe, dependable, and reliable local roads for vehicular traffic.

(2) That the development and maintenance of the economy of Indiana's cities, towns, and counties requires an adequate system of local roads in order to provide for the public welfare and to facilitate the creation and maintenance of jobs, the increase and stabilization of the tax base, and the general economic welfare of cities, towns, and counties and their citizens.

(3) That it is necessary to serve the public interest and to provide for the public welfare by adopting this article for the purposes described in this article.

Sec. 2. This article provides an additional and alternative method for doing the things authorized by this article, and is supplemental and additional to powers conferred by other laws and not in derogation of any other powers.

Sec. 3. This article is necessary for the welfare of the cities, towns, and counties of Indiana and their inhabitants, and shall be liberally construed to effect the purposes of this article.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Authority" refers to the Indiana transportation finance authority established by IC 8-9.5-8-2.

Sec. 3. "Bonds" refers to bonds of the authority issued under IC 8-14.6-6.

Sec. 4. "Capitalized interest" means interest cost on bonds or notes before and during the period of construction of the local road project for which the bonds or notes were issued, and for a period not to exceed one (1) year after completion of construction.

Sec. 5. "Construction" means the construction, acquisition, reconstruction, improvement, and extension of a local road project.

Sec. 6. "Costs" as applied to any local road project includes any item or cost of a capital nature incurred in the construction of a local road project, including:

- (1) the cost of construction;
- (2) the cost of acquisition of all land, rights-of-way, property, rights, easements, and any other legal or equitable interests

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acquired by the authority for the construction, including the cost of any relocations incident to the acquisition;

(3) the cost of demolishing or removing any buildings, structures, or improvements on property acquired by the authority, including the cost of:

(A) acquiring any property to which the buildings, structures, or improvements may be moved; or

(B) acquiring any property that may be exchanged for property acquired by the authority;

(4) financing charges;

(5) costs of issuance of bonds or notes, including costs of credit enhancement, such as bond or note insurance;

(6) remarketing or conversion fees;

(7) bond or note discount;

(8) capitalized interest;

(9) the cost of funding any reserves to secure the payment of bonds or notes;

(10) engineering and legal expenses, costs of plans, specifications, surveys, estimates, and any necessary feasibility studies;

(11) other expenses necessary or incident to determining the feasibility or practicability of constructing any local road project;

(12) administrative expenses of the authority or one (1) or more local units relating to any local road project financed by bonds or notes;

(13) reimbursement of one (1) or more local units for:

(A) any cost, obligation, or expense incurred by the local unit or units relating to a local road project;

(B) advances relating to a local road project from the local unit or units to the authority for surveys, borings, preparation of plans and specifications, or engineering services; or

(C) any other cost of construction incurred by the local unit or units or paid from advances; and

(14) other expenses the authority finds necessary or incident to the construction of the local road project, the financing of the construction, and the placing of the local road project in operation.

Sec. 7. "Local road project" means any:

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- (3) motorway;
- (4) bridge;
- (5) tunnel;
- (6) overpass;
- (7) underpass;
- (8) interchange;
- (9) entrance;
- (10) approach; or
- (11) other public way;

that is part of the arterial road system, local county roads, arterial street system, or local streets for a local unit for purposes of IC 8-14-2. The term includes all land, rights-of-way, property, rights, easements, materials, and legal or equitable interests necessary for the construction of the local road project.

Sec. 8. "Local unit" means a city, town, or county acting through its fiscal body (as defined in IC 36-1-2-6).

Sec. 9. "Notes" refers to notes of the authority issued under IC 8-14.6-6 and includes any evidences of indebtedness of the authority except bonds.

Sec. 10. "Property owner" means all individuals, copartnerships, associations, governmental units or entities, corporations, limited liability companies, or other legal entities having any title or interest in any land, rights-of-way, property, rights, easements, or legal or equitable interests that may be acquired by the authority.

Sec. 11. "Weighted average life" of an issue of bonds or notes means:

- (1) the sum of the products of the face amount of each maturity and the number of years to maturity (determined separately for each maturity and by taking into account mandatory sinking fund redemptions); divided by
- (2) the face amount of the entire issue of bonds or notes.

Sec. 12. "Weighted average useful life" of a local road project or local road projects means:

- (1) the sum of the products of the cost of each asset comprising the local road project or local road projects and the useful life of the respective asset; divided by
- (2) the total cost of all the assets comprising the local road project or local road projects.

For purposes of this computation, the useful life of land is fifty (50) years. The useful life of all other assets comprising the local road project shall be conclusively evidenced by a certificate of the local

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unit, supported by a statement from the local unit's consulting engineer. The weighted average useful life of any local road project shall be determined as of the later of the date on which the local road project is expected to be placed in service and the date on which the bonds or notes are issued.

Chapter 3. General Provisions

Sec. 1. The authority shall contract with one (1) or more local units for construction, ownership, maintenance, and operation of local road projects.

Sec. 2. The authority shall finance local road projects in accordance with this article.

Sec. 3. The authority may exercise any powers provided under this article in participation or cooperation with any governmental entity and enter into any contracts to facilitate that participation or cooperation without compliance with any other statute. This article constitutes complete authority for the authority to carry out its powers and duties under this article. No law, procedure, proceedings, publications, notices, consents, approvals, orders, or acts by the authority or any other officer, department, agency, or instrumentality of the state or any political subdivision are required for the authority to carry out its powers and duties, except as prescribed in this article.

Sec. 4. The authority may pay the cost of construction of a local road project from any funds available to the authority under this article or any other law.

Sec. 5. The authority may sell, transfer, lease, or otherwise convey any land, rights-of-way, property, rights, easements, or legal or equitable interest it considers necessary or convenient for carrying out this article, including disposal of unused or surplus property.

Sec. 6. The authority may acquire by purchase, whenever it considers a purchase expedient, any land, rights-of-way, property, rights, easements, or other legal or equitable interests as it considers necessary or convenient for the construction and operation of any local road project. A purchase under this section shall be made upon the terms and at the price agreed upon between the authority and the property owner.

Sec. 7. The authority may make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article or any other law. These contracts or agreements are not subject to any approvals other than the approval of the authority and may be for any term

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of years and contain any terms that are considered reasonable by the authority.

Sec. 8. The authority may employ and fix the compensation of financial advisors and underwriters, bond counsel, other attorneys with the approval of the attorney general, and other employees, independent contractors, and agents as necessary in its judgment to carry out this article. The authority is subject to the provisions of 25 IAC 5 concerning equal opportunities for minority business enterprises and women's business enterprises to participate in procurement and contracting processes.

Sec. 9. The authority may accept gifts, devises, bequests, grants, appropriations, revenue sharing, other financing and assistance, and any other aid from any source and agree to and comply with conditions attached to the aid.

Sec. 10. The authority may accept the transfer of any local road project to the authority.

Sec. 11. (a) Except as provided in subsection (b), the authority may, in the manner provided by IC 8-23-7, acquire by appropriation any land, rights-of-way, property, rights, easements, or other legal or equitable interests necessary or convenient for the construction or the efficient operation of any local road project. However, compensation for the property taken shall first be made in money as provided by law.

(b) The authority may take or disturb property or facilities that:

- (1) belong to any public utility or to a common carrier engaged in interstate commerce;
- (2) are required for the proper and convenient operation of the public utility or common carrier; and
- (3) are not located within the limits of local road projects being constructed under this article;

only if provision is made for the restoration, relocation, or duplication of the property or facilities elsewhere at the cost of the authority.

Sec. 12. The authority may do all things necessary or proper to carry out this article.

Sec. 13. A local unit may convey, transfer, lease, or sell, with or without consideration, real property of any nature (including buildings, structures, improvements, land, rights-of-way, easements, and legal or equitable interests), title to which is held in the name of the local unit, to the authority, without being required to advertise or solicit bids or proposals, in order to accomplish the governmental purposes of this article.

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Sec. 14. All property of the authority is public property devoted to an essential public and governmental function and purpose and is exempt from all taxes and special assessments of the state or any political subdivision of the state.

Chapter 4. Contracts With Local Units

Sec. 1. The authority is responsible for the construction, leasing, and ownership of local road projects. With respect to each local road project, the authority and one (1) or more local units may enter into a contract for the purposes set forth in this chapter. If the authority and the local unit or units decide to enter into a contract under this chapter, the authority and the local unit or units may enter into a separate contract for each local road project or a master contract for several local road projects.

Sec. 2. A contract under this chapter must:

- (1) provide for the construction and ownership of the local road project; and
- (2) describe the local road project or local road projects, setting forth in general terms principal features such as geographic location, widths of rights-of-way, number of lanes in each direction, width of traffic lanes, widths of shoulders, location and nature of tunnels, overpasses, underpasses, interchanges, bridges, approaches, and connecting roads, streets, and highways.

Sec. 3. The contract may include the following:

- (1) Provisions for payment by the authority to the local unit or units of all costs incurred by the local unit or units in the performance of the contracts, including all costs of construction, salaries, wages, and associated costs of personnel attributable to performance of the contract.
- (2) Other terms and conditions that the authority and the local unit or units consider appropriate.

Sec. 4. Notwithstanding any other law, a local unit may enter into a contract with the authority by negotiating the contract with the authority and without complying with the requirements of any other law. A local unit shall observe any existing contractual commitments to the holders of bonds or notes or other persons when entering into a contract.

Chapter 5. Leases With Local Units

Sec. 1. (a) In addition to its other powers, one (1) or more local units may enter into a lease or leases with the authority under section 2 or 3 of this chapter for any or all of the purposes set forth in this article. Notwithstanding any other law, a local unit may

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enter into a lease with the authority by negotiating the lease with the authority and without complying with the requirements of any other law. A local unit shall observe any existing contractual commitments to the holders of bonds or notes or other persons when entering into a lease.

(b) The authority has all the powers necessary and incidental to carry out the terms and conditions of leases under this chapter.

(c) If the authority and one (1) or more local units decide to enter into a lease under this chapter, the authority and the local unit or units may enter into a separate lease for each local road project or may enter into one (1) or more master leases for several local road projects.

Sec. 2. (a) A lease entered into under this section must include the following:

(1) A statement that the term of the lease is for a period coextensive with the biennium used for state budgetary and appropriation purposes with a fractional period when the lease begins, if necessary.

(2) A statement that the term of the lease is extended from biennium to biennium, with the extensions not to exceed a lease term of twenty-five (25) years, unless either the authority or the local unit or units give notice of nonextension at least six (6) months before the end of a biennium, in which event the lease expires at the end of the biennium in which the notice is given.

(3) A provision plainly stating that the lease does not constitute an indebtedness of the state or any local unit within the meaning or application of any constitutional provision or limitation, and that lease rentals are payable by the local unit or units solely from the sources described in section 6 of this chapter, for the actual use or availability for use of local road projects provided by the authority, with payment commencing not earlier than the time the use or availability commences.

(4) Provisions requiring the local unit or units to pay rent at times and in amounts sufficient to pay in full:

(A) the debt service payable under the terms of any bonds or notes issued by the authority and outstanding with respect to any local road project, including any required additions to reserves for the bonds or notes maintained by the authority; and

(B) additional rent as provided by the lease;

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subject to the appropriation of money by the local unit or units to pay lease rentals.

(5) Provisions requiring the local unit or units to operate and maintain the local road project or local road projects during the term of the lease.

(6) A provision in each master lease for two (2) or more local road projects requiring that each local road project added to the master lease shall be covered by a supplemental lease describing the particular local road project, stating the additional rental payable and providing that all lease covenants, including the obligation to pay the original and additional rent under any supplement, shall be unitary and include all local road projects covered, whether by the master lease or a supplemental lease.

(b) A lease entered into under this section may contain other terms and conditions that the authority and the local unit or units consider appropriate.

(c) The fiscal officer (as defined in IC 36-1-2-7) of the local unit shall request an appropriation from the local unit for payment of lease rentals on any lease entered into under this section in writing at a time sufficiently in advance of the date for payment of the lease rentals so that an appropriation may be made in the normal budgetary process of the local unit.

Sec. 3. (a) A lease entered into under this section must include the following:

(1) The term of the lease, which may not exceed the weighted average useful life of the local road project or local road projects.

(2) A provision plainly stating that the lease does not constitute an indebtedness of the state or any local unit within the meaning or application of any constitutional provision or limitation, and that lease rentals are payable by the local unit or units solely for the annual use or availability for use of local road projects provided by the authority, with payment commencing not earlier than the time the use or availability commences.

(3) Provisions requiring the local unit or units to pay rent at times and in amounts sufficient to pay in full the following:

(A) The debt service payable under the terms of any bonds or notes issued by the authority and outstanding with respect to any local road project, including any required additions to reserves for the bonds or notes maintained by

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the authority.

(B) Additional rent as provided by the lease.

(4) Provisions requiring the local unit or units to operate and maintain the local road project or local road projects during the term of the lease.

(5) A provision in each master lease for two (2) or more local road projects requiring that each local road project added to the master lease shall be covered by a supplemental lease describing the particular local road project, stating the additional rental payable and providing that all lease covenants, including the obligation to pay the original and additional rent under any supplement, shall be unitary and include all local road projects covered, whether by the master lease or a supplemental lease.

(b) A lease entered into under this section may contain other terms and conditions that the authority and the local unit or units consider appropriate.

Sec. 4. If a local unit fails at any time to pay to the authority when due any lease rentals on any lease under this chapter, the chairman of the authority shall immediately report the unpaid amount in writing to the general assembly and the governor.

Sec. 5. A local unit or units may lease any property under its control to the authority for construction of a local road project, which local road project may be leased to the local unit or units.

Sec. 6. (a) A local unit shall pay lease rentals for leases entered into under this chapter from revenues from any combination of the following sources:

- (1) Money payable to the local unit from the motor vehicle highway account.
- (2) Money payable to the local unit from the local road and street account.
- (3) Revenues from the county motor vehicle excise surtax.
- (4) Revenues from the county wheel tax.
- (5) Federal transportation revenues apportioned or allocated to the state and distributed to the local unit by the Indiana department of transportation.
- (6) Any other source of revenues (other than property taxes) that is legally available to the local unit.

(b) A local unit may, in the manner provided by IC 5-1-14-4, pledge the revenues described in this section for the payment of lease rentals. However, in making a pledge the local unit shall not commit money required to provide adequate funding for other

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Sec. 7. If a local unit pledges money from the motor vehicle highway account or the local road and street account, or both, for the payment of lease rentals for leases entered into under this chapter, the local unit shall immediately provide the auditor of state with a written notice setting forth the terms of the pledge and directing the auditor of state to:

- (1) withhold the amounts pledged from the distributions that are otherwise payable to the local unit under IC 8-14-1-3 or IC 8-14-2-4, or both; and
- (2) pay the amounts withheld to the authority.

Notwithstanding IC 8-14-1-3 and IC 8-14-2-4, the auditor of state shall withhold and pay to the authority the amounts specified in the notice.

Sec. 8. Notwithstanding any other provision of law, to the extent that any department or agency of the state, including the treasurer of state, is the custodian of money payable to a local unit (other than for goods or services provided by the local unit), at any time after written notice to the department or agency head from the authority that the local unit is in default on the payment of lease rentals for a lease entered into under this chapter, the department or agency shall withhold the payment of that money from the local unit and pay over the money to the authority for the purpose of paying the lease rentals.

Sec. 9. The requirements of sections 7 and 8 of this chapter to withhold amounts due under a lease do not create a debt of the state or a local unit for purposes of the Constitution of the State of Indiana.

Chapter 6. Issuance of Bonds and Notes

Sec. 1. Subject to sections 2 and 5 of this chapter, and before July 1, 2007, the authority shall, by resolution, issue and sell bonds or notes of the authority to provide funds to carry out this article with respect to the construction of a local road project or local road projects or the refunding of any bonds or notes, together with any reasonable costs associated with a refunding.

Sec. 2. Before the issuance of bonds or notes, the authority must receive the approval of the budget agency.

Sec. 3. (a) The construction of a local road project may not be financed under this article if, at the time the lease with respect to the local road project is initially entered into, the weighted average useful life of the local road project is less than five (5) years.

(b) For purposes of this section and section 5 of this chapter, a

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certificate of the local unit, supported by a statement from the local unit's consulting engineer, as to the weighted average useful life of the local road project is conclusive with respect to the matters contained in the certificate.

(c) If any bonds or notes bear interest at a variable or adjustable rate, lease rentals under any lease or leases attributable to debt service shall be fixed over the term of the lease or leases based on the fair and reasonable value of the local road project or local road projects leased.

Sec. 4. (a) Before issuing a series of bonds or notes, the authority shall publish a notice of its determination to issue the bonds or notes. The notice shall be published:

- (1) one (1) time in two (2) newspapers published and of general circulation in the city of Indianapolis; and
- (2) one (1) time in one (1) newspaper published and of general circulation in each local unit that proposes to enter into a lease of the local road projects to be financed by the bonds or notes.

(b) No action to contest the validity of:

- (1) any contract entered into by one (1) or more local units and the authority before the bonds or notes are issued;
- (2) any lease entered into by one (1) or more local units and the authority before the bonds or notes are issued to secure a series of bonds or notes; or
- (3) a series of bonds or notes issued by the authority;

may be brought against the authority after the fifteenth day following publication of the notice required by subsection (a)(1) or against a local unit after the fifteenth day following publication of the notice under subsection (a)(2).

(c) If a lease or contract is entered into under this chapter after bonds or notes relating to the lease or contract are issued, the authority may publish notice of execution of the lease or contract as set forth in subsection (a). No action against the authority to contest the validity of such a lease or contract may be brought after the fifteenth day following publication of the notice under subsection (a)(1) or against a local unit after the fifteenth day following publication of the notice under subsection (a)(2).

(d) If an action against the authority or a local unit challenging a lease, a contract, bonds, or notes is not brought within the time prescribed by this section, the lease, contract, bonds, or notes shall be conclusively presumed to be fully authorized and valid under the laws of the state and any person or entity is estopped from

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further questioning the authorization, validity, execution, delivery, or issuance of the contract, lease, bonds, or notes.

Sec. 5. (a) The bonds or notes must indicate on their face:

- (1) the maturity date or dates, as determined under subsection (b);
- (2) the interest rate or rates (whether fixed, variable, or a combination of fixed and variable) or the manner in which the interest rate or rates will be determined if variable or adjustable rates are used;
- (3) registration privileges and place of payment, including provisions for book entry obligations as set forth in IC 5-1-15;
- (4) the conditions and terms under which the bonds or notes may be redeemed or prepaid before maturity; and
- (5) the source of payment as set forth in section 10 of this chapter.

(b) The weighted average life of the bonds or notes may not exceed the sum of:

- (1) the weighted average useful life of the local road project or local road projects to be financed from the proceeds of the bonds or notes; plus
- (2) the period of construction of the local road project or local road projects.

Sec. 6. The bonds or notes:

- (1) shall be executed by the manual or facsimile signature of the chairman or vice chairman of the authority;
- (2) shall be attested by the manual or facsimile signature of the secretary-treasurer or assistant secretary-treasurer of the authority;
- (3) shall be imprinted or impressed with the seal of the authority by any means;
- (4) may be authenticated by a trustee, registrar, or paying agent; and
- (5) constitute valid and binding obligations of the authority, even if the chairman, vice chairman, secretary-treasurer, or assistant secretary-treasurer whose manual or facsimile signature appears on the bonds or notes no longer holds that office.

Sec. 7. The bonds or notes, when issued, have all the qualities of negotiable instruments, subject to provisions for registration, under IC 26 and are incontestable in the hands of a bona fide purchaser or owner of the bonds or notes for value.

Sec. 8. The bonds or notes may be sold by the authority at a

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public or a negotiated sale at a time or times determined by the authority and at a premium or discount as determined by the authority. In determining the amount of bonds or notes to be issued and sold, the authority may include the costs of construction or of refunding bonds or notes, including reasonable debt service reserves, and all other expenses necessary or incident to the construction of the local road project, a refunding, or the issuance of the bonds or notes.

Sec. 9. The proceeds of the bonds or notes are appropriated for the purpose for which the bonds or notes may be issued and the proceeds shall be deposited and disbursed in accordance with any provisions and restrictions that the authority may provide in the resolution or trust agreement authorizing the issuance of the bonds or notes. The maturities of the bonds or notes, the rights of the owners, and the rights, duties, and obligations of the authority are governed in all respects by this article and the resolution or trust agreement.

Sec. 10. The bonds or notes:

- (1) constitute the corporate obligations of the authority;
- (2) do not constitute an indebtedness of the state or any local unit within the meaning or application of any constitutional provision or limitation; and
- (3) are payable solely as to both principal and interest from:
 - (A) the revenues from a lease to one (1) or more local units, if any;
 - (B) proceeds of bonds or notes, if any; or
 - (C) investment earnings on proceeds of bonds or notes.

Sec. 11. The provisions of this article and the covenants and undertakings of the authority as expressed in any proceedings preliminary to or in connection with the issuance of the bonds or notes may be enforced, subject to the provisions of any resolution or trust agreement, by a bond or note owner by action for injunction or mandamus against the authority or any officer, agent, or employee of the authority. However, no action for monetary judgment may be brought against the state for any violations of this article or for payment of the bonds or notes of the authority.

Sec. 12. All bonds or notes issued under this article are issued by a body corporate and politic of this state, but not a state agency, and for an essential public and governmental purpose. The bonds and notes, the interest on the bonds and notes, the proceeds received by an owner from the sale of the bonds or notes to the

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extent of the owner's cost of acquisition, proceeds received upon redemption for maturity, proceeds received at maturity, and the receipt of the interest and proceeds are exempt from taxation for all purposes except the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1.

Sec. 13. Notwithstanding any other law, all financial institutions, investment companies, insurance companies, insurance associations, executors, administrators, guardians, trustees, and other fiduciaries may legally invest sinking funds, money, or other funds belonging to them or within their control in bonds or notes issued under this chapter.

Sec. 14. Bonds or notes issued under this chapter are exempt from the registration requirements of IC 23-2-1 and any other state securities registration statutes.

Sec. 15. A pledge of lease rentals, proceeds of bonds or notes, investment earnings on those proceeds, or other money pledged by the authority is binding from the time the pledge is made. Lease rentals, proceeds of bonds or notes, investment earnings on those proceeds, or other money pledged by the authority and thereafter received by the authority or its trustee or fiduciary is immediately subject to the lien of the pledge without any further act, and the lien of the pledge is binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, regardless of whether the parties have notice of the lien. A resolution, trust agreement, or any other instrument by which a pledge is created is required to be filed or recorded only in the records of the authority.

Sec. 16. The authority may obtain from a department or an agency of the state or of the United States, or from a nongovernmental insurer, available insurance or guaranty for the payment or repayment of interest or principal, or both, or any part of interest or principal, or any debt service reserve funds, on bonds or notes issued by the authority, or on securities purchased or held by the authority.

Sec. 17. The authority may enter into agreements with an entity to provide credit enhancement or liquidity support for any bonds or notes issued by the authority, or for any debt service reserves securing any bonds or notes, with terms that are reasonable and proper, in the discretion of the authority, and not in violation of law. The authority may execute and deliver notes to evidence its obligation to make payments under such an agreement, but these notes must conform to this article in all respects.

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Sec. 18. The authority may enter into agreements or contracts with any financial institution as may be necessary, desirable, or convenient in the opinion of the authority for rendering services in connection with:

- (1) the care, custody, or safekeeping of securities or other investments held or owned by the authority;
- (2) the payment or collection of amounts payable as to principal or interest; and
- (3) the delivery to the authority of securities or other investments purchased or sold by it.

The authority may also, in connection with any of the services rendered by a financial institution as to custody and safekeeping of its securities or investments, require security in the form of collateral bonds, surety agreements, or security agreements as, in the opinion of the authority, is necessary or desirable.

Sec. 19. (a) In the discretion of the authority, any bonds and notes issued under this chapter may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company in Indiana. Such a trust agreement may also provide for a cotrustee, which may be any trust company or bank in Indiana or another state.

(b) The trust agreement or the resolution providing for the issuance of the bonds or notes may contain provisions for protecting and enforcing the rights and remedies of the owners of bonds or notes as may be reasonable and proper, in the discretion of the authority, and not in violation of law.

(c) The trust agreement or resolution may set forth the rights and remedies of the owners of any bonds or notes of the trustee and may restrict the individual right of action by the owners.

(d) Any trust agreement or resolution may contain other provisions that the authority considers reasonable and proper for the security of the owners of bonds or notes.

(e) All expenses incurred in carrying out the provisions of the trust agreement or resolution may be paid from money pledged or assigned to the payment of the principal of and interest on bonds or notes or from any other funds available to the authority.

Sec. 20. The authority may purchase bonds or notes of the authority out of its funds or money available for the purchase of its own bonds or notes. The authority may hold, cancel, or resell the bonds or notes subject to, and in accordance with, agreements with owners of its bonds or notes. Unless canceled, bonds or notes so

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held shall be considered to be held for resale or transfer and the obligation evidenced by the bonds or notes shall not be considered to be extinguished.

Sec. 21. Funds or money held by the authority under any trust agreement or resolution may be invested pending disbursement as provided in the trust agreement or the resolution. Such an investment is not restricted by or subject to the provisions of any other law.

Chapter 7. Reserve Fund for Bonds and Notes

Sec. 1. (a) The authority may establish and maintain a reserve fund for each issue of bonds or notes in which there shall be deposited or transferred:

- (1) all money appropriated by the general assembly for the purpose of the fund in accordance with section 3(a) of this chapter;**
- (2) all proceeds of bonds or notes required to be deposited in the fund under the terms of:**
 - (A) a contract between the authority and the holders of the bonds or notes; or**
 - (B) a resolution of the authority with respect to the proceeds of bonds or notes;**
- (3) all other money appropriated by the general assembly to a reserve fund; and**
- (4) any other money or funds of the authority that the authority decides to deposit in the fund.**

(b) Subject to section 3(b) of this chapter, money in any reserve fund shall be held and applied solely to the payment of the interest on and principal of bonds or notes of the authority as the interest and principal become due and payable and for the retirement of bonds or notes. The money may not be withdrawn if a withdrawal would reduce the amount in the reserve fund to an amount less than the required debt service reserve, except for payment of interest then due and payable on bonds or notes and the principal of bonds or notes then maturing and payable, whether by reason of maturity or mandatory redemption, for which payments other money of the bank is not then available. As used in this chapter, "required debt service reserve" means, as of the date of computation, the amount required to be on deposit in the reserve fund as provided by resolution or trust agreement of the authority.

(c) Money in any reserve fund that exceeds the required debt service reserve, whether by reason of investment or otherwise, may be withdrawn at any time by the authority and transferred to

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another fund or account of the authority, subject to the provisions of any agreement with the holders of any bonds or notes.

Sec. 2. For purposes of valuation, investments in the reserve fund shall be valued at par, or if purchased at less than par, at cost unless otherwise provided by resolution or trust agreement of the authority. Valuation on a particular date shall include the amount of interest then earned or accrued to that date on the money or investments in the reserve fund.

Sec. 3. (a) In order to assure the maintenance of the required debt service reserve in any reserve fund, the general assembly may annually appropriate to the authority for deposit in one (1) or more of the funds the sum, certified by the authority to the general assembly, that is necessary to restore one (1) or more of the funds to an amount equal to the required debt service reserve. Before December 1 of each year, the authority shall make and deliver to the general assembly a certificate stating the sum required to restore the funds to that amount. Nothing in this subsection creates a debt or liability of the state to make any appropriation.

(b) All amounts received on account of money appropriated by the state to any reserve fund shall be held and applied in accordance with section 1(b) of this chapter. However, at the end of each fiscal year, if the amount in any reserve fund exceeds the required debt service reserve, any amount representing earnings or income received on account of any money appropriated to the reserve fund that exceeds the expenses of the authority for that fiscal year may be transferred to the state general fund.

Sec. 4. Subject to the provisions of any agreement with its holders, the bank may combine a reserve fund established for an issue of bonds or notes into one (1) or more reserve funds.

SECTION 13. IC 8-23-3-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 11.** Notwithstanding any other provision of this chapter, if grant anticipation revenue bonds or notes have been issued under IC 8-14.5-7, the department shall collect or cause to be collected federal transportation revenues (as defined in IC 8-14.5-7-1) and shall, as provided by the department in the revenue declaration relating to the issuance of the grant anticipation revenue bonds or notes, deposit or cause to be deposited the specified part of the federal transportation revenues in the grant anticipation fund established by IC 8-14-10-10."

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to ESB 19 as printed February 13, 2004.)

CRAWFORD, Chair

Committee Vote: yeas 24, nays 0.

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